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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, *Ex rel.*
JANE DOE, a Washington resident,

Plaintiff,

v.

EXOTIC METALS FORMING COMPANY,
LLC, a Washington limited liability
company,

Defendant.

16 CV-01869 JLR
Case No.

FILED *IN CAMERA* AND UNDER SEAL

FALSE CLAIMS ACT

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT PURSUANT TO 31 U.S.C. §§ 3729-3732
OF THE FEDERAL FALSE CLAIMS ACT

The United States of America, by and through *qui tam* relator Jane Doe ("Relator"), brings this action under 31 U.S.C. § 3729, *et seq.*, as amended ("False Claims Act") to recover all damages, penalties, and other remedies established by the False Claims Act on behalf of the United States.

I. Preliminary Statement

1. This is an action to recover damages and civil penalties, on behalf of the United States of America, for violations of the False Claims Act arising from false or fraudulent records, statements, or claims, or any combination thereof, made, used, or caused to be made, used, or presented, or any combination thereof, by the Defendant, their agents, employees, or co-conspirators, or any combination thereof, with respect to false reporting, monitoring, and certification of the Defendant's Affirmative Action Plan to the Office of Federal Contractor Compliance Program ("OFCCP") and the obtaining of Federal construction contracts under false pretense arising from the same.

II. Parties

2. Relator, Jane Doe, is a resident of the State of Washington and a former Human Resources Manager at Defendant Exotic Metals Forming Company, LLC.

3. Defendant Exotic Metals Forming Company, LLC is a limited liability company authorized to conduct business in the State of Washington, is a federal contractor with approximately 1,100 employees, and is required to submit an Affirmative Action Plan to the OFCCP.

III. Jurisdiction

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and 31 U.S.C. § 3732, the latter of which specifically confers jurisdiction on this Court for action brought pursuant to 31 U.S.C. §§ 3729 and 3730.

5. There have been no public disclosures of the allegations or transactions contained herein that bar jurisdiction under 31 U.S.C. § 3730(e).

6. This Court has personal jurisdiction over the Defendant pursuant to 31 U.S.C. § 3732(a) because the Defendant has at least minimum contacts with the United States, and can be found in, reside, or transact or have transacted, business in the Western District of Washington.

7. Venue exists in the United States District Court for the Western District of Washington pursuant to 31 U.S.C. § 3730(b)(1) because the Defendant has at least minimum contacts with the United States, and can be found in, reside, or transact or have transacted, business in the Western District of Washington.

IV. Applicable Law

A. Affirmative Action Plan

8. Equal employment and affirmative action regulations have three basic requirements for federal contractors.

9. First, federal contractors may not discriminate in employment or applications for employment based on race, gender, sexual orientation, religion, national origin, age, disability, or veteran status. 48 C.F.R. 52.222-26.

10. Second, federal contractors must also take affirmative action to ensure that equal opportunity is provided. 48 C.F.R. 52.222-26.

11. Third, federal contractors must keep personnel and employment records for two to three years from the date of the record or the personnel action (e.g., hiring promotion) involved. 41 C.F.R. 60-4.

1 12. All contractors and subcontractors who hold a Federal or federally-assisted contract
2 of more than \$10,000 are subject to regulatory requirements under the laws enforced by OFCCP. 41
3 C.F.R. 60-1.5(a); 41 C.F.R. 60-4.1.
4

5 13. All contracts and subcontractors contain the equal employment opportunity
6 requirements of 41 C.F.R. 60-4.1 to ensure (1) non-discrimination on protected characteristics and
7 commitment to take affirmative action; (2) statement of equal employment opportunities in
8 advertisements; (3) notice to labor unions; (4) compliance with all of EO 11246 (order imposing non-
9 discrimination and affirmative action requirements for contractors); (5) agreement to furnish all
10 information as required by EO 11246 and to permit access to records and accounts; (6) penalties for
11 non-compliance; and (7) requirement to flow-down to subcontractors.
12

13 14. Contractors with more than 50 employees and \$50,000 or more in government
14 contracts or subcontracts must submit annual report on their EEO and affirmative action activity. 41
15 C.F.R. 60-2.1.
16

17 15. In addition, covered contractors must certify on new contracts that they have complied
18 in the past.
19

20 16. Covered contractors must have an affirmative action plan that includes continual self-
21 evaluation for compliance with EEO and affirmative action rules, as well as mechanisms for reaching
22 statutory placement goals.
23
24
25
26

B. False Claims Act

17. False Claims Act liability attaches to any person who knowingly presents or causes a false or fraudulent claim to be presented for payment, or to a false record or statement made to get a false or fraudulent claim paid by the government. 31 U.S.C. § 3729(a)(1)-(2).

18. Under the False Claims Act, “knowing” and “knowingly” mean that a person with respect to information:

- a. Has actual knowledge of the information;
- b. Acts in deliberate ignorance of the truth or falsity of the information; or
- c. Acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required. 31 U.S.C. § 3729(b).

19. The False Claims Act is violated not only by a person who makes a false statement or a false record to get the government to pay a claim, but also by one who engages in a course of conduct that causes the government to pay a false or fraudulent claim for money.

V. Allegations

20. Defendant is a contractor or subcontractor who holds Federal construction contracts of more than \$10,000 and is subject to regulatory requirements under the laws enforced by OFCCP.

21. Defendant has more than 50 employees and \$50,000 or more in government construction contracts or subcontracts and therefore must submit an annual report on its EEO and affirmative action activity.

22. Defendant knowingly falsified its Affirmative Action Plan when seeking Federal construction contract with a value of more than \$10,000.

23. Defendant's Affirmative Action Plan does not meet legal requirements.

24. Defendant knowingly failed to accurately certify on new contracts that it complied in the past with EEO and affirmative action rules.

25. Defendant knowingly failed to self-evaluate for compliance with EEO and affirmative action rules, as well as develop mechanisms for reaching statutory placement goals.

26. Defendant violated the False Claims Act when it made false statements or submitted false records to obtain Federal construction contracts and to get the government to pay it pursuant to those contracts.

VI. Causes of Action

Count 1: Defendant is Liable for Falsifying Affirmative Action Plan

27. Defendant contractor entered into contracts with the federal government while not in compliance with EEO and affirmative action rules.

28. Defendant applied for and obtained government construction contracts or subcontracts while knowingly submitting false and inaccurate annual reports detailing its affirmative action activity to the OFCCP

- a. with actual knowledge;
- b. in deliberate ignorance; or
- c. in reckless disregard

that such information was false, and is liable under the False Claims Act.

29. Defendant knowingly failed to implement an affirmative action plan that included continual self-evaluation for compliance with EEO and affirmative action rules, as well as mechanisms for reaching statutory placement goals.

30. Defendants knowingly submitted false certification that it had complied with EEO and affirmative action rules in the past, and is liable under the False Claims Act.

31. After knowingly submitting false and inaccurate records on its affirmative action plan, failing to self-evaluate for compliance with EEO and affirmative action rules, and falsely certifying that it had complied with EEO and affirmative action rules, Defendant knowingly submitted false records to get a false claim paid by the government.

VII. Defendant's Liability

32. By virtue of the acts described above, Defendant knowingly (a) submitted, and continues to submit, and/or (b) caused and/or continues to cause to be submitted, false or fraudulent claims to the United States Government for payment of construction contracts.

33. The government paid and continues to pay such false claims.

34. By reason of the Defendant's acts or omissions, the United States has been damaged, and continues to be damaged, in an amount to be determined at trial.

VIII. Prayer for Relief

WHEREFORE, for the reasons set forth above, Relator Jane Doe, on behalf of the United States, respectfully requests this Court enter the following relief:

a. That Defendant be ordered to cease and desist from violating 31 U.S.C.

§ 3729 *et seq.*

- 1 b. This this Court enter a judgment against Defendant for an amount three
2 times the contract price paid to Defendant while Defendant was acting
3 in violation of the False Claims Act;
4
5 c. Civil penalties of not less than \$5,500 and not more than \$11,000 for
6 each violation of 31 U.S.C. § 3729;
7
8 d. Relator seeks a fair and reasonable amount of any award for her
9 contribution to the Government's investigation and recovery pursuant
10 to 31 U.S.C. §§ 3730(b) and (d) of the False Claims Act;
11
12 e. Relator seeks recovery of her reasonable attorney's fees and costs;
13
14 f. Pre-judgment and post-judgment interest; and
15
16 g. All other relief on behalf of the Relator and/or United States government
17 to which they may be entitled at law or equity.

18 Dated this 7 day of December, 2016.

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